EXHIBIT S

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 05-60200-brl
- -x
In the Matter of:

CALPINE CORPORATION,

Debtor.

- -x

United States Bankruptcy Court
One Bowling Green
New York, New York

August 8, 2007
10:55 AM

B E F O R E:
HON. BURTON E. LIFLAND
U.S. BANKRUPTCY JUDGE

HEARING re Debtors' Motion for an Order, Pursuant to 11 U.S.C. Section 363(b) and Rule 9019 of the Federal Rules of Bankruptcy Procedures Approving Settlement Agreement Among Pacific Gas and Electric Company, Delta Energy Center, LLC and Los Medanos Energy Center, LLC

HEARING re Motion (a) to Authorize the Debtors to Assume Certain Leases and Executory Contracts Relating to the Debtors' Gilroy Facility; (b) Approving Certain Amendments Thereto; and (c) Granting Related Relief

HEARING re Motion to Approve Settlement Agreement Between the Debtors and Turlock Irrigation District

HEARING re Debtors' Motion for Authorization to Enter into Stipulation with Second Lien Committee and Wilmington Trust Company, as Indenture Trustee

HEARING re Debtors' Third Omnibus Objection to Proofs of Claim (Beneficial Certificate Holder Claims Related to Rumford/Tiverton Financing, Beneficial Noteholder Claims, Equity Interest Claims, Hybrid Equity Interest/Beneficial Noteholder Claims and Unspecified Equity Interest/Beneficial Noteholder Claims)

HEARING re Debtors' Twelfth Omnibus Objection to Proofs of Claim (Amended/Replaced Claims, No Liability Claims, Duplicative Claims, Claims to be Adjusted, Wrong Debtor Claims to be Adjusted, Claims Filed by the Fireman's Fund Insurance Company and PSM Management Claims)

HEARING re Debtors' Thirteenth Omnibus Objection to Proofs of Claim (No Liability Claims, Anticipatory Claims, Assumed Contract Claims, Amended/Replaced Claims, Unliquidated Claims, Claims to be Adjusted and Wrong Debtor Claims to be Adjusted)

HEARING re Debtors' Sixteenth Omnibus Objection to Proofs of Claim (Claims to be Adjusted, Wrong Debtor Claims to be Adjusted, Duplicative Claims, Anticipatory Claims, No Liability Claims, Amended/Replaced Claims, Unliquidated Claims and Assumed Contract Claims)

HEARING re Debtors' Seventeenth Omnibus Objection to Proofs of Claim (Claims to be Adjusted, Wrong Debtor Claims to be Adjusted, Amended/Replaced Claims and No Liability Claims)

HEARING re Debtors' Limited Objection to Convertible Noteholder Claims

HEARING re Adversary Proceeding 1-07-01760, Calpine Corporation v. Rosetta Resources, Pre-Trial Conference

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MR. KIESELSTEIN: Your Honor, good morning again. Mark Kieselstein on behalf of the debtors. Your Honor, this takes us to item 11 on the agenda, the debtors' limited objection to certain of the convertible noteholder claims. Your Honor, before we launch into the hearing, there are a couple of speeded issues, if you will, about the appropriate scope of the hearing today, which was the subject of a call among the parties yesterday and unfortunately we were unable to resolve the two issues. We did resolve one of three.

Your Honor, the issues are these. The debtors are of the belief that now is an appropriate time to take up the question of mandatory subordination under Section 510(b) of the Bankruptcy Code. That is to say, although we are not getting into the quantum of damages in today's hearing, we do believe it's appropriate and helpful to our process to understand the Court's view on whether or not any claim that might be cognizable would be at the level of one's secured claim or would be subordinated pursuant to 510(b) to the level of equity. We did brief that issue in our opening brief, several pages worth, and we further expanded on that in our reply. We understand the position of the convertible noteholders that it

seemed procedurally inappropriate at this time to go forth with the subordination in question because that purportedly requires a formal adversary proceeding. Your Honor, in our reply we cited -- actually, a case of Your Honor's where a request for subordination joined a claim objection and was treated as a de facto adversary proceeding. We think that is appropriate here as well.

You know, we would also note, Your Honor, that given the belated nature of the filing of the claims to sort of stand on procedural niceties -- and , again, we don't think they apply here but to stand on procedural niceties to further attenuate these proceedings only augments the prejudice to the debtor and we ought to get to this question right away.

Your Honor, the other issue in dispute is -- the scope of the hearing is the question of the size of the claim. We again are not going to quant the damages for purposes of today's hearing; however, the issue of prejudice in terms of the belated nature of the amendment or the new claim depending on how one characterizes it turns -- and we believe it's impacted by the potential size of the claim. We made a reference in our brief, our reply brief, to the fact that these claims could amount to hundreds of millions of dollars. Candidly, the noteholders have said in their papers that they believe the claims are material and substantial despite repeated requests not shared with us the range of claims they

actually think exist under their theories. Again, we think it's an important and relevant issue on the question of prejudice. For lack of a better term, size matters when it comes to prejudice and related claims. So we think these ref -- we think talking about this is appropriate albeit we're not getting into any formal evidentiary wave of quantum damages. We're really only repeating things we've heard from noteholders in non-408 segments. So again, we think it's relevant for discussion today preliminarily.

MS. BECKERMAN: Good morning, Your Honor, Lisa Beckerman on behalf of the creditors' committee. We obviously concur with Mr. Kieselstein edition here. In our papers, we have also raised the issue of the late filed nature of the claims as well as whether they are untimely amendments. And as Your Honor knows, under the second circuit test that would be applicable to those, one of the issues that does have to be considered by the Court in determining those issues is the prejudice which does look at the size of the claims. I think in our papers we have also said that the claims could be as much as up to a billion dollars from our understanding, Your Honor, and that therefore they're very sizable as well.

Our concern is that the -- what the respondents here are trying to do, the convertible claim holders, is to take a position that Your Honor could not rule at this point on the issue that we both raised in our papers and the debtors raised

in their papers that the claim should be denied on the basis that they were untimely filed, either as untimely filed new claims or untimely filed amendments. And the reason that the convertible debt holders have argued that we can't refer to even things as there being in a very large size range that we've been told would obviously mean that they would be in a position of trying to tell Your Honor that that matter would have to await an evidentiary hearing or something till we show you the actual amount of it. And we find that to be a delay tactic, very distressing, and we think that the burden is on them under the second circuit test to come forward and demonstrate that there isn't prejudice to the estate and we've obviously been told that these claims are very substantial.

I don't think that if they thought these claims were one dollar, Your Honor, we would have been filing all these papers and litigating about them today. So I confer with Mr. Kieselstein's point that I think we at least have to be able to represent that it's our understanding that they could very large and therefore quite prejudicial to the estate in the argument. And to be barred from doing that, having to await an evidentiary hearing, I think they would be trying to use their decision to file a claim without an amount is a shield for us being able to, you know, oppose the claims on a very legitimate basis that they're late filed.

And so we'd obviously ask that we be able to be heard

at least to the extent of just saying that we believe the claims are very substantial and could be in these ranges that we're talking about.

MR. DUNNE: Your Honor, may I stream on this because I think we're arguing over something that's not in dispute instead of hearing the same point again from Mr. Kaplan. It's really -- Your Honor, if I may, it's Mr. Dunne from Milbank Tweed Hadley & McCloy on behalf of clients who hold the 6% convertible notes. We are not disputing that they can make a representation that we believe at an evidentiary hearing we will ultimately be able to prove damages in the hundreds of millions of dollars. We've also agreed that we're not having that evidentiary hearing today. The facts are not actually before you. They believe it's much less than a hundred million dollars. Our only point was --

THE COURT: You're describing the elephant in the room?

MR. DUNNE: Right.

THE COURT: Okay. We've got an elephant in the room.

MR. DUNNE: Exactly. That --

THE COURT: It's got a hundred million plus on its hide. Okay.

MR. DUNNE: Exactly.

THE COURT: That's what everybody wanted to know. How about a billion?

MR. DUNNE: Well, for the sixes -- it's not a billion for the sixes, but hundreds of millions.

THE COURT: Half a billion?

MR. DUNNE: Could be.

THE COURT: Could be? Okay.

MR. KAPLAN: Your Honor, the only thing I just wanted to note was that in the Enron decision the second circuit actually specifically addressed this and specifically said the size -- at the same time, however, the size of the claim cannot be irrelevant to the analysis. And some parts are taken into account whether allowance of a late claim would jeopardize the success. So the second circuit itself has looked at it and said you cannot say that the size of the claim is simply relevant for these purposes.

MR. HANSEN: Your Honor, it's Kris Hansen at Stroock on behalf of the certain seven and three-quarter percent noteholders. I think we're all in agreement here that references can be made to the size of the claim. The point that we had yesterday in our conference call was that for Your Honor to make a decision --

THE COURT: You know, folks, I'm not interested in your conference call. I'm only interested in what you before me. You didn't include me in your conference call, number one. Number two, you filed a ton of papers before me and I've gone through them and I'm prepared to react as any judge would do

with respect to papers that have been submitted before him. The gamesmanship that goes on here. To find out just the size of the elephant in the room, you should have come to that conclusion on your telephone call and not burden everybody with it now. I now know I'm dealing with a very, very large sum of money in the view of some of the claimants. Eleventh hour filed claims, as a matter of fact.

MR. DUNNE: Your Honor, may I address the other aspects of Mr. Kieselstein's remarks which went to subordination and the appropriateness of getting into that today?

THE COURT: Well, that's been put in with all the papers so I'll deal with it.

MR. DUNNE: That's right. I'm prepared to address it in the order that --

THE COURT: Fine. If you put it in your papers, you intend for -- to react to it.

MR. KIESELSTEIN: Your Honor, with that, I'll launch into my remarks which will be brief, Your Honor. Your Honor, with their other worldly convertible valued claims, these creditors, Your Honor, boldly but belatedly go where no other creditor has ever gone before, Your Honor. But these claims are riddled with procedural and substantive defects and you received exhaustive and I'm sure exhausting briefing, Your Honor, so I only intend to briefly review --

THE COURT: Again, the court reporter is not here. So I'm going to ask you to speak up.

MR. KIESELSTEIN: Sure. I apologize.

THE COURT: It's a microphone that's picking you up and I'm not sure it's doing its job. Can you tell?

MR. KIESELSTEIN: Well, the levels --

THE COURT: The levels are all right?

MR. KIESELSTEIN: Yeah.

THE COURT: Okay, good. They've gone down?

MR. KIESELSTEIN: Well, they're going up and down but other than that --

THE COURT: Will you point to who's quiet so they can raise their voice?

MR. KIESELSTEIN: Your Honor, I'm going to move physically closer to the microphone. Hopefully, that will assist. I apologize for the sidelong glance, Your Honor.

Your Honor, as I was saying, you've received exhaustive and probably exhausting briefing so I only want to briefly review a few of the key issues. First, Your Honor, on the timeliness question, we've set out in our papers that there obviously is an issue about whether these amendments which no one disputes were filed many months after the bar date relate back to the original proofs of claim that were filed or whether they are entirely new claims, Your Honor. For purposes of figuring out whether or not they relate back, Your Honor, the

Courts have talked about whether the amendment is a clarification of the original proof of claim. Whether it was a correction of an error in the original proof of claim or whether it laid out an alternative theory seeking the same recovery as the original claim. Clearly, this proof of claim on this novel theory or this amendment doesn't fit any of those categories. Now there's been some talk in the papers about this transaction test, i.e., does the claim arise out of the same transaction? But that issue is really a proxy for whether or not the debtors were put on notice that this claim was coming. And in fact, we were blind sighted by this claim because such a claim has never been previously asserted, Your Honor.

On the question of prejudice, that is, even if one were to say, yes, it relates back, there's still a determination of whether it's equitable to considerable the claim or not. Here, Your Honor, there is obvious prejudice. We've just heard that the claim may amount to the hundreds of millions of dollars. This, while we are frantically attempting to put together a guaranteed distribution plan, hit our January 31, 2008 exit date all with the shadow of the expiration of exclusivity looming over us, Your Honor. And as we've talked about the prejudice which already exists is burgeoning on a daily basis because we repeatedly asked how much is the claim and we can't get a straight answer to that question. So as we

go further into these negotiations, we're further handicapped by not knowing the scope of what we're dealing with or the size of the elephant.

In terms of the other factor is what was the justification for delay, here there was no justification for delay. Some of the creditors say, well, we didn't know how we were going to be treated under our plan. But it doesn't work that way, Your Honor. Creditors don't file claims based on a plan. Debtors file a plan based on claims. And the bar date matters. It's not just a day on a bureaucrat's calendar, Your Honor. It's critically important and numerous cases have recognized that.

Certainly, the other creditors candidly concede that the increased value of the estate made it worth their while to log in these claims when they did. But the bar date is not resurrected and no safe harbor is created on the other side of the bar date simply because the debtors' estate is perceived to having increased in value. Under their theory, they had the claim the day we filed for Chapter 11. They had it the day the original bar date became due. They chose not to file it until much, much later.

Your Honor, turning to the merits, I think we have to return to first principles of convertible debentures. The convertible notes permit alternative forms of recovery that are mutually exclusive. Two ways of obtaining a return on one's

investment. Either principal and interest or conversion to stock, not both. One or the other, whether in bankruptcy or out. Now, the holders argue that the inden -- there are independent rights to both in this situation. That is, an independent right to the P&I and an independent right to the conversion privilege. But here, those rights are wholly interdependent, not independent and conjoined. Once a bond is converted, it obviously no longer exists. And the only way to get stock is to convert a bond. So these are mutually exclusive. Notwithstanding the fact that they've asserted a claim for both P&I and for the conversion privilege. That's a metaphysical impossibility inside bankruptcy or out, Your Honor.

The fact that the pre-default -- they're pre-default. The bonds could be converted for a combination of cash and stock -- doesn't change this basic truth. Those rights are interlinked; they don't operate independently and they don't create dual claims, Your Honor. For that reason alone, the conversion privilege claims are subsumed and consumed by the P&I claims previously filed by the holders and purported to be allowed under our waterfall plan. We don't dispute basic P&I. Those claims are well established.

Your Honor, it would be different if the lender, let's say, loaned a thousand dollars to a borrower, got back 800 dollars in bond and 200 dollars in warrants. And we talk

about it in A Choc Full O'Nuts case, there was -- the second circuit recognized, there was such a beast. You could have an instrument that had those two separate independent features. But that's not our facts. That's not what we have here, Your Honor.

Further, even if we looked away from the timeliness issue, even if we ignored the fundamental nature of convertible indentures, here the conversion privilege expired by its terms before it was ever exercised and that was because under the terms of the indentures, when the debtor filed for bankruptcy the maturity by contract was accelerated. There was acceleration. All P&I was due immediately and the indentures also provide that one day prior to maturity conversion privilege goes away.

So, Your Honor, here we have automatic acceleration under the agreement. We have maturity lower case and that terminates the conversion privilege. Now the holders argue that maturity doesn't mean maturity. They argue that lower case maturity should be read to mean stated maturity which is a defined term in the indentures and basically means the original stated maturity on the cover of the indentures, 2014, 2023, whatever it is. But if that were the case, it would have been simple enough to say "stated maturity" rather than have lower case maturity and we all know the common sense in the dictionary definition of maturity for these purposes is when

all the principal and interest comes due and payable. And that's how these indentures operated. So that's on December 20th, 2005, Your Honor. Under the documents, the conversion privilege had vaporized.

And what then of Section 1015(d) which the holders purport to make much of, Your Honor? That provision purports to allow the conversion privilege to survive post-bankruptcy. Well, in the first instance, Your Honor, the way the holders interpret 10.15(d) would be to obliterate the other provisions that I just discussed, the maturity provision, the acceleration provision and we all know it's a basic rule of contract instruction that when two provisions may appear to be at odds with each other, it's the duty of the Court to attempt to harmonize them in a way that does violence to neither, Your Honor. Here, there are -- it's not difficult at all to harmonize these two provisions. There are two ways that jump to mind. First, if but only if the pre-conditions to conversion had occurred pre-bankruptcy, one could read 1015(d) to say that the conversion privilege survived, albeit modified to provide for conversion only to stock and not to cash and stock. Similarly, one can read 1015(d) to say that if the conversion privilege was in the process of being exercised and there was an intervening bankruptcy, then the conversion privilege again would be honored albeit by converting to stock not to cash and stock. And I would note that the process for

actually converting the bonds is quite complicated under the documents. 10.02 talks about to convert a hol -- a note, the holder must complete and manually sign the irrevocable conversion notes, deliver them to the conversion agent, deliver the note to the conversion agent, furnish appropriate endorsement and transfer documents, pay any transfer or other taxes, if the note is held in book entry form, complete and deliver the depositary, appropriate instructions pursuant to the applicable procedures. When all of those things are satisfied, you then have the conversion date thereafter. The debtor would have four business days or not less than four business days to actually go ahead and process the conversion, deliver the cash, deliver the stock.

So one could imagine that there could be quite a lengthy process and if a bankruptcy were to enter midstream, one could certainly read 1015(d) to say fine, we're going to go ahead and allow that process to be finished up, again, albeit the currency of stock only.

So, Your Honor, we think it's rather easy to harmonize those provisions without a disarray in the maturity provision of the documents or the acceleration provision of the documents.

I would also note that the holders here did not bargain for any compensation if the conversion privilege were to be terminated by the terms of the documents. In essence,

the equivalent of a pre-payment premium for early payment. No such provision was put in the documents here; however, the convertible holders would like the Court to create one for their benefit. That is to say, treat (d) like a bondholder, you know, without a pre-payment premium but that got paid early and therefore didn't have its expectations met. And I think, Your Honor, this goes to the phenomena we talked about a little bit ago which is the noteholders want to be in the band guard of the CalGen revolution, Your Honor. They want to be at the front of the dashed expectations parade and the way they're doing it is to latch on to these documents and create a right that does not exist anywhere within the four corners, Your Honor.

But even if one, Your Honor, were to ignore the untimeliness issue, the nature of convertible debt holders -- debt instruments, the fact that the documents provided that the conversion privilege expired by its terms, the lack of any contractual provision granting such a right post-conversion, there still would be no basis for a claim for damages here because it's undisputed that the pre-conditions for conversion never transpired. These conversion rights were always under water. They were always out the money and pursuant to 502 of the Code, when claims are fixed as of the petition date, if you've got an out of the money option put/warrant thing of that nature, then you have basically got a cognizable claim in

bankruptcy. Now that is not to say that there might be some third party out there that says underwater warrants with a ten-year term, underwater conversion privileges with a ten-year term, I'll pay money for that, that's worth something. It may even be worth more than par depending on what other comparable investments are out there.

But that's a distinction that's critical. What you can get from the secondary market is not something you can necessarily assert against the debtor. The debtor is not a backstop for the secondary market and convertible debt instruments. And the fact that the privilege has gone away or is terminated and you can't go pedal that to some third party, again, that gives rise to no claim against the debtor. 502 tells us that. And the Einstein/Noah case, the other cases we've cited stand for the proposition that an underwater equity type instrument whether it's embedded in a contract or anywhere else does not give rise to a claim when it's out of the water on day 1.

Finally, Your Honor -- trying to edit my comments down -- the subordination issue, Your Honor. Even if one ignores tardiness, the only other things I've talked about, it's clear that any claim arising from this loss of the conversion privilege which is, after all, is nothing more than the right to buy stock with bonds. Any damages that would arise from that would clearly be subject to mandatory

subordination under Section 510(b) of the Code. It's clear from the case law that 510(b) is broadly construed. There does not have to be an actual sale or purchase of a security. If there's a contract that provides for the prospect of a purchase of a security and the actions of a debtor or the intervention of bankruptcy take away that right even though never exercised, the damages that would arise from that clearly fall within the ambit of Section 510. As Judge Gonzales noted in WorldCom, all of these instruments, puts/warrants options, conversion privileges are really just the ability to participate in the success of the enterprise. And it should go without saying that the converse is equally true. One looking to have a right to invest in the success of the enterprise takes a risk of the failure of the enterprise as well. That's what's transpired here and it does not give rise to a cognizable claim.

Now you'll hear the noteholders say, wait a minute, 510(d) expressly excludes from its workings convertible debt instruments. But clearly, what that provision is meant is to prevent, you know, aggressive, sneaky debtors from trying to subordinate the entire P&I claim simply because it happens to be under the umbrella of a convertible debt instrument. It does not immunize the conversion privilege from being treated as it is, as an equity claim or at the level of equity.

And, Your Honor, I suspect you won't hear much from noteholders' counsel about independent rights, about the right

to P&I, right to conversion privilege when you get to the subject of subordination because that puts them in a box. If it's a separate right to purchase equity with bonds, then the implication is clear. It's within the ambit, again, of Section 510(b).

Your Honor, I apologize for racing through that but I'm happy to answer any questions the Court might have.

MS. BECKERMAN: Your Honor, on behalf of -- Lisa Beckerman from Akin Gump on behalf of the creditors' committee. Your Honor, we basically think that there are three reasons why these claims should be denied. And one is that contractually, we don't think that they're entitled to the claims and I think our papers have dealt with that and I'll just touch on a couple points that are hopefully slightly different from Mr. Kieselstein's.

Second, we don't think that even within the ambit of your CalGen decision that we have before the Court and the context of expectation damages that there would be such expectation damages that would be awarded here or due here or should be claimed here because the contract doesn't provide them with the expectation that would be necessary to allow them to have such a claim.

And last, of course, we'll touch on the timeliness issue that we've already spoken about a little bit earlier in the hearing.

Your Honor, the indenture is very clear that when there's a bankruptcy filing there is an automatic acceleration and the principal and interest becomes due. I think in a circumstance like this where you have a convertible debenture that that was intentional. That the document itself limits itself to the principal and interest becoming due. It doesn't suggest that there's anything else that comes due. And it's because these securities, as Mr. Kieselstein, I think, has mentioned, you having a unique feature in the sense that you are a debt holder and you get principal and interest and you're treated like a creditor until such time as your conversion privileges become great, if they ever do under your document, and then if you, yourself, voluntarily elect to actually convert at that point, then you exchange your note to become an equity holder or, outside of bankruptcy, perhaps for cash.

Here, we have a situation where the indenture treats them in a situation where there's a bankruptcy filing like every other creditor would be. You get principal, you get interest, that's what you get. As Mr. Kieselstein pointed out, obviously the language of the indenture itself doesn't seem to imply in any way that there would have been some other claim that would have been available based on unripe conversion rights. And that's what we had here, Your Honor. We had, under Section 10.01, which is the actual section of the indenture, that does actually deal with the right to convert or

not, not 10.5 or 10.4, as the case may be (d). That section of the indenture does say to you that you have to satisfy these certain provisions, certain factual things, either relating to the value of the stock, passage of dates, mergers and consolidations, things that weren't in existence and hadn't happened at the time of the bankruptcy filing.

So we have a situation where the contract itself is very clear what happens to you if there's a bankruptcy filing, there's the acceleration and principal and interest, and we didn't have a situation we had any ripe conversion rights. Well, that's important because pursuant to 502(b), obviously everyone's claims that are involved in this proceeding are fixed as the filing date and the language of the document doesn't provide them with a claim for unripe conversion rights. The language of the document provides them with principal and interest. The language of the document says that the conversion right couldn't be exercised after maturity and you had a maturity. And the languages of the document say, along with the Bankruptcy Code, that, you know, you're stuck at what you had on the date of the filing. And what they had on the date of the filing were unripe conversion rights that were not exercisable at that point.

So then, you have to look at, well, how do we reconcile the fact that we have this provision that the respondents, that the convertible debenture holders have

focused on, which is this 10.14(d) and 10.15(d) depending on the indenture. You know, I think that, as our papers indicate, our reading of that is that if in the two indentures where it discusses a situation where there is any type of default, the language of that provision is limited to saying what kind of form or value you would get if you did convert. And obviously, outside of bankruptcy, there's no automatic acceleration, no automatic situation where the notes reach maturity outside of bankruptcy and, therefore, it might obviously be possible that somebody would wish to exchange in a situation -- if the conversion was available to them. And that's what that provision allows for.

With respect to the 7.75 indenture, which obviously does speak specifically in a 10.15(d)(2)(b) bankruptcy default situation, our view is that we think that the only way to reconcile that with the rest of the reading of the indenture and make it make sense is in a hypothetical situation where those conversion rights have been ripe at the time of the filing. And that wasn't our case here.

The way that the convertible debenture holders want to read this indenture, it would mean that you're going the provision saying you get -- principal and interest become due and payable. You're ignoring the situation where there's the acceleration in the document. You're ignoring the fact that you don't have a ripe conversion right at the time of the

filing under 10.01 of the document. You're ignoring the fact that the document uses a term "stated maturity" to mean stated maturity and therefore "maturity" must mean something else in the notes, the more general (b) that we read. And it's very hard to read the indenture in a way that makes sense, in a way that's being argued by the convertible debenture holders. And whereas we think that the reading that we've advanced or the companies advanced does read the indenture the way that makes sense -- yes, as you know under the case law what we all need to be trying to do here.

In addition, because the conversion rights were not ripe at the time under the cases that we've cited and Mr. Kieselstein previously referred to, in Einstein and the other cases, it's argued that there wouldn't be a claim that was ripe at the time of the filing because it's not under -- there wouldn't be a claim under the indenture and the conversion rights were not ripe. This is a situation where I think you see the convertible debenture holders trying to have it both ways. On one hand, outside of bankruptcy, basically, they have a choice where they get principal and interest, they can stay as a noteholder for the entire term of the indenture if they'd like to. Or, at some point, if the conversion rights are ripe and they then exercise their right to choose to, they could exchange their position and leave being a creditor and becoming either cashed out or an equity holder outside of bankruptcy.

Here they're arguing that they get something in addition to their rights as a creditor. That they get their rights as a creditor, the principal and interest and what they're entitled to just like every creditor is and they also get some kind of claim for the lost conversion rate even though that's not set forth in the indenture and it wasn't ripe and therefore it wouldn't be a permissible claim under 502(b). In essence, they're trying to get better rights in a bankruptcy than they would be entitled to contractually outside of a bankruptcy. And I don't think the indenture can be read that way that makes sense.

The second point is that I don't believe that the CalGen decision supports their entitlement to a claim under expectation damages. First of all, this is not the situation that we had in CalGen where you had somebody who had a provision in their documents that provided for a payment stream over time that got interrupted solely because of the bankruptcy filing and the acceleration. Here, at best, you have a reading where under certain circumstances, if they ever happen and then if the person actually chooses to elect at that point to convert, they have a right to switch over from debt to cash and equity outside of bankruptcy and equity at best inside of bankruptcy.

As of the filing date, none of the conditions pressed in any indenture were met for doing that. And the indenture is

very clear, that you get principal and interest and you don't get a claim. Based on the language of the agreement, it's hard to see how the convertible debenture will just -- could have had an expectation of anything but principal and interest. The document itself just says that's what you're going to get. There's an acceleration; that's what you're entitled to. It doesn't say that you always get a conversion rate. It says that you get a conversion rate if certain things happen, if there isn't a maturity, if you actually choose to exercise it and obviously there is no situation at the time of the filing where those rights were exercisable.

The convertible debenture holders are sophisticated parties. Section 502(b) of the Bankruptcy Code has been in existence for a lot longer than the indentures. The case law about automatic acceleration with respect to a bankruptcy has been out there. And it's clear that if the parties had wanted to preserve some kind of liquidated damages claim or other right or some argument that they had an expectation to get something after a bankruptcy filing other than in principal and interest, the document would have to support that. And unless the document supports it, I don't think your CalGen decision supports the argument for that because there can't have been a reasonable expectation.

And in addition to the contract not supporting their reasonable expectation, we have a unique situation here where

unlike the CalGen creditors who had a contractual provision that said you're going to get the stream of payments over time, here you have a situation where the person under certain circumstances might have a right to convert and every individual noteholder has the right to decide if those circumstances are even ripe if you would actually exercise them. And at the time of a bankruptcy filing there is the maturity and obviously the situation where the principal and interest comes due. It's very hard for someone to look at the reading of this contract and think that they would have had an expectation of any kind of damages but furthermore to then award expectation of damages assuming that every single -- that these conversion rights sometime in the future would have become ripe, even though there's a lot of conditions to it, and then to say that every person would have exercised them. I don't think that -- I think that's quite a stretch from Your Honor's CalGen decision and I don't think that's supported by the case law or even by the CalGen rationale. I just think that they're very distinguishable.

The last point that I wanted to make to Your Honor is the supplemental claims, as they're so-called. From our perspective, these are clearly your late filed claims. These are not amendments clarifying claims that were stated before. What you have here is claims that have never been asserted in any reported decision that we could find ourselves in the